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Supreme Court, U.S.
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No. 09-798

In The
Supreme Court of the United States

NIRANJAN LAL,

Petitioner,

v.

UNITED STATES LIFE INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner has presented a compelling reason to grant the Petition where the Sixth Circuit's unpublished, non-precedential decision involved only a Michigan state law breach of contract claim, involved no federal issue, involved no constitutional question, created no split in authority among any circuit courts of appeal, and did not conflict with any opinion from this Court.

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STATEMENT OF THE CASE

A. INTRODUCTION

The decision below is unreported and is not binding on any court, including subsequent panels within the Sixth Circuit. 6th Cir. L.R. 206(c) (noting that only "[r]eported panel opinions are binding on subsequent panels"). It involved only a state law claim for breach of contract. The decision does not conflict with a decision of this Court, nor does it create any split of authority among circuit courts of appeal that requires this Court's resolution. It presents no federal or constitutional issue. The issue sought to be reviewed is peculiar, unique, fact-specific and exceedingly narrow - - i.e., whether an injunction staying enforcement of a state medical board's order suspending a doctor's license precludes the automatic termination of a disability income insurance policy where the policy unambiguously says that coverage ends "upon the suspension or revocation in any state of [Petitioner's] license to practice medicine". Lastly, the Sixth Circuit's decision was correct.

Petitioner simply cannot meet his burden of demonstrating any "compelling reasons" for the Petition to be granted. Sup. Ct. R. 10.

B. RELEVANT FACTS

Petitioner Niranjan Lal ("Lal") sued Respondent United States Life Insurance Company ("U.S. Life") alleging that U.S. Life wrongfully denied his claim for disability income insurance benefits under a policy (the "Policy") which pays a monthly benefit if he is

"disabled," meaning that he is unable to perform the material duties of his occupation as a physician, and that he is receiving regular care for the condition causing the disability. Lal claimed that he was disabled as a result of pancreatitis. U.S. Life denied his claim, concluding that the Policy automatically terminated by its terms when the State of Michigan suspended Lal's license to practice medicine by order of March 27, 1997, and Lal did not claim to have become disabled until 2003. Michigan suspended Lal's medical license based upon allegations (later proven true) that he illegally prescribed Vicodin.

On July 14, 2006, U.S. Life moved for summary judgment on the basis that Lal's alleged disability began long after the Policy terminated in March, 1997, and the district court denied that motion by Opinion and Order of December 7, 2006.

The case was tried to the bench on June 5 and 6, 2007. The district court found in favor of Lal, holding that Lal satisfied the Policy's definition of "disability" as of February, 2003. U.S. Life timely appealed to United States Court of Appeals for the Sixth Circuit.

By an unpublished opinion of September 3, 2009, the Sixth Circuit reversed, holding that coverage ended as a matter of law on March 27, 1997 based upon the policy's unambiguous provision that it would "end . . . upon the suspension or revocation in any state of your license to practice medicine," and because it was undisputed that on March 27, 1997 the Michigan Department of Consumer and Industry Services, Board of Medicine and Disciplinary

Subcommittee summarily suspended his medical license.

1. Relevant Terms of the Policy

The Policy expressly states: "Your insurance will end **upon the suspension or revocation in any state of your license to practice medicine** as a result of a criminal act, ethical violation, or gross malpractice."

2. The State of Michigan Summarily Suspended Lal's Medical License in 1997

On March 27, 1997 the Department of Attorney General, Health Professionals Division, on behalf of the Michigan Department of Consumer & Industry Services, Office of Health Services Board of Medicine Disciplinary Subcommittee (the "State Medical Board") entered an Order of Summary Suspension of Lal's medical license which was effective "commencing the date this order is served upon Respondent." Lal received the Order on March 31, 1997 and immediately contacted an attorney, who filed a petition in a Michigan state court requesting that the Order be stayed. An Ex-Parte Order Staying the Order of Summary Suspension was entered the afternoon of March 31, 1997.

The criminal proceedings against Lal went forward, and on March 17, 1999, a jury convicted Lal of the drug charges that ensued from the same investigation that lead to his licensing suspension. As with his suspension, Lal did not inform U.S. Life of his criminal conviction.

The Disciplinary Subcommittee entered a Final Order of Suspension on January 17, 2003. Again, Lal did not inform U.S. Life of that order.

3. Lal's Claim for Total Disability Benefits

Despite the fact that his license had been suspended by the State of Michigan in March, 1997, causing the Policy to terminate automatically by its terms, Lal submitted a claim to U.S. Life for total disability benefits on September 5, 2003, some 7 months after he claimed to have become disabled. According to the claim form, on February 4, 2003, Dr. Lal was totally disabled by chronic pancreatitis, a health condition that he had suffered from since childhood, and with which he had managed to practice medicine during the entire span of his medical career. Lal's September 5, 2003 claim stated that his disability allegedly began on February 4, 2003 – eighteen days after the Final Order of Suspension was entered and twelve days before its effective date.

4. U.S. Life Denied Lal's Claim for Benefits

After Lal filed his claim for benefits, U.S. Life finally learned of the disciplinary actions taken against Lal by the State of Michigan, including both of his medical license suspensions, as part of a routine claim investigation. U.S. Life immediately notified Lal that his insurance coverage was terminated. U.S. Life determined that, under the terms of the Policy, Lal's insurance was cancelled effective March 27, 1997. Lal then commenced the underlying lawsuit.

5. Proceedings in the District Court

U.S. Life filed a Motion for Summary Judgment on July 14, 2006, seeking judgment that Dr. Lal was not entitled to any disability benefits because (1) as a matter of law, the Policy terminated automatically upon service of the Order of Summary Suspension on March 31, 1997, prior to the date of disability, or (2) as a matter of law, the Policy terminated upon entry of the Final Order of Suspension on January 17, 2003, prior to the date of disability, or (3) Lal could not be considered "totally disabled" under the Policy because he was not under the regular care and attendance of a physician prior to his license suspension.

The district court denied U.S. Life's Motion, finding among other things there was a question of fact as to whether Lal was "totally disabled" before the Policy terminated. In denying U.S. Life's motion, the district court held that Lal's license was suspended on February 16, 2003, and the Policy terminated on that date.

The matter proceeded to a bench trial and the district court issued its Opinion on July 12, 2007, finding in favor of Lal. U.S. Life timely appealed.

6. The Sixth Circuit Opinion

On September 3, 2009, the Sixth Circuit reversed the district court in an unpublished, unreported opinion. The Sixth Circuit held that the "unambiguous language of the contract said that Lal's contract terminated once his license was suspended for ethical violations," and that "[n]othing in the language

suggests that an extremely short period of suspension is not sufficient to trigger termination" (9/3/09 Opinion at 6a). The Sixth Circuit concluded that "[b]ecause coverage terminated once the state suspended Lal's license, the district court should have granted summary judgment to U.S. Life. . ." . (*Id.* at 7a).

REASONS FOR DENYING THE PETITION

A. There Is No Compelling Reason For Granting *Certiorari*

Petitioner's only argument for reviewing the unpublished Sixth Circuit opinion is that "[c]ertiorari should be granted in this matter to correct" a legal error "which adversely affects" his "material rights." Petition for Writ of *Certiorari* at 7. Correcting alleged errors, especially alleged errors in unpublished opinions, is simply not a compelling reason for granting the Petition. *See Overton v. Ohio*, 534 U.S. 982, 985-86 (2001) ("we cannot act as a court of simple error correction and . . . the unpublished intermediate court decision below lacks significant value as precedent") (Breyer, J., for Stevens, O'Connor, and Suter, J. J., regarding denial of *certiorari*"). *See also Ross v. Moffitt*, 417 U.S. 600, 617-18 (1974) ("[t]his Court's review is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review").

B. The Sixth Circuit Correctly Ruled That the Policy Automatically Terminated in March 1997

In addition to Lal's wholesale failure to demonstrate any compelling reason to grant the Petition, the writ should also be denied because the Sixth Circuit's holding was correct.

The U.S. Life Policy specifically provides that "Your insurance will end . . . upon the suspension or revocation in any state of your license to practice medicine as a result of a criminal act, ethical violation or gross malpractice . . . ." By Order of March 27, 1997, the Department of Consumer and Industry Services, Board of Medicine and Disciplinary Subcommittee suspended Lal's medical license "commencing the date this Order is served upon" him, which was March 31, 1997. The Sixth Circuit correctly applied the unambiguous policy terms to the undisputed facts and properly concluded that the Policy terminated upon suspension of Lal's license, regardless of any subsequent state court stay order.

First, the Policy language is unambiguous in stating that the Policy terminates upon suspension of an insured's medical license. It is well-established that "courts are bound by the specific language set forth in [insurance] agreements," *Heniser v. Frankenmuth Mut. Ins. Co.*, 449 Mich. 155, 160 (1995), and "an insurance policy must be enforced in accordance with its terms." *Reznick v. Provident Life & Acc. Ins. Co.*, 364 F. Supp. 2d 635, 637 (E.D. Mich. 2005), *aff'd* 181 Fed. Appx. 531 (6th Cir. 2006). Moreover, "[i]f there is no ambiguity in the Policy, the Court will 'enforce the

terms of the contract as written.'" *Reznick, supra*, 364 F. Supp. 2d at 637 (quoting *Nabozny v. Burkhardt*, 461 Mich. 471, 477 (1991)).

The Policy is plain and unambiguous in stating that it terminates upon suspension of an insured's medical license. The Policy does not state that there is any minimal duration of suspension before termination occurs, nor does it indicate that the license suspension must be permanent, final, or that the termination of the Policy is void if a license suspension is stayed or reversed as the result of administrative action, appeal or otherwise. It was of course undisputed (and indisputable) that Lal's license was suspended effective March 31, 1997. Applying the Policy's unambiguous terms, the Policy terminated as a matter of law, regardless of Lal's subsequent efforts to obtain a stay of the suspension.

The Policy does not say that it terminates "upon **final** suspension" of the insured's medical license, or "upon suspension **after exhaustion of any appellate review**." Nor does it say that the Policy terminates "upon suspension of your medical license, **unless a court stays or enjoins the order of suspension**." The Policy also does not say that it terminates "upon the suspension of your medical license, **provided that it remains suspended for a certain minimum period of time**." The Policy says simply and unambiguously that it terminates "upon the suspension or revocation in any state of your license to practice medicine. . . ." Lal can only justify the result he seeks by adding words to the Policy that it does not contain, and by ignoring the unambiguous terms that it uses.

As an insurer, U.S. Life is free to limit the scope of policy coverage and the kinds of risk for which it will extend benefits. *Heniser v. Frankenmuth Mut. Ins. Co.*, 449 Mich. 155, 161 (1995) ("[a]n insurer is free to define or limit the scope of coverage"). A court is not permitted to construe an insurance policy in such a way that expands the scope of policy coverage to include risks or losses that are not covered by the terms of the policy. *Becktell v. Allstate Ins. Co.*, 648 F. Supp. 977, 979-80 (E.D. Mich. 1996) ("The parties to any insurance policy are permitted to enlarge or circumscribe insurance liability risks as they desire .... This Court is not empowered to rewrite the policy in order to award benefits to an aggrieved insured."); *U.S. Fid. & Guaranty Co. v. Star Fire Coals, Inc.*, 856 F.2d. 31, 33 (6th Cir. 1988) ("[t]he court must give all terms their plain meanings and not rewrite an insurance contract to enlarge the risk"); *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 567 (1992) ("[i]t is impossible to hold an insurance company liable for a risk it did not assume"); *Trierweiler v. Frankenmuth Mut. Ins. Co.*, 216 Mich. App. 653, 657 (1996) ("[a]n insurance company should not be held liable for a risk it did not assume"); *Illinois Employers Ins. of Wausau v. Dragovich*, 139 Mich. App. 502, 507-08 (1984) ("[A]n insurance company may not be held liable for a risk it did not assume. ... Plaintiff clearly limited its liability under the policy provision at issue, and we cannot alter or rewrite the parties' contract."); *Lehr v. Professional Underwriters*, 296 Mich. 693, 696-97 (1941) ("[A]n insurance company may limit the risks it assumes and fix its premiums accordingly.... The liability was limited in the policy. To hold otherwise would be to write a new contract for the parties."). The Michigan Supreme Court declared in *ACGIE v.*

Marzonie, 447 Mich. 624, 631 (1994), that "this Court will not countenance holding 'an insurance company liable for a risk it did not assume'."

In the present case, Lal is attempting to add to the Policy terms that do not exist in it, and thereby expand the scope of coverage beyond that to which U.S. Life agreed. The Policy insured Lal unless his medical license became suspended, which undisputedly occurred in March 1997. The Policy limited U.S. Life's coverage by expressly terminating insurance if a state agency determined that his license should be suspended. U.S. Life did not agree to provide coverage if an insured's license is suspended, but is later reinstated for some reason (e.g., by a finding that the insured did not commit the alleged misconduct, or by order of a court).

Second, the state court's stay order did not "preserve the status quo." To the contrary, the "status quo" as it existed before Lal commenced the state court action to obtain the stay was that his license was suspended.

As the Sixth Circuit recognized, the district court was simply wrong in holding that the state court's stay order merely maintained the *status quo* and kept Lal's license in place, uninterrupted by the state's suspension order. The state court's stay order **affirmatively altered** the legal relationship of the parties that were before it, and **changed** the status of Lal's medical license and his ability to practice. When Lal filed the state action and walked into court *ex parte* to obtain a stay on March 31, 1997, he was a physician whose license had been suspended by the

State of Michigan and who could not legally practice medicine. The state court, in issuing the stay, affirmatively altered his status as it existed when he commenced the action. An order which alters or changes the legal relationship of the parties before it alters or changes (as opposed to preserves) the *status quo*. *See J.O. ex rel. C.O. v. Orange Tp. Bd of Educ.*, 289 F.3d 267, 273 (3rd Cir. 2002) (observing that TRO "did not . . . alter the legal relationship between the parties, but only preserved the status quo").

In contexts similar to the present action, stay orders that disrupt pending proceedings are deemed to alter, not preserve, the *status quo*. For example, in *522 W. 38th St. v. New York Hotel & Motel Trades Council*, 517 F. Supp. 2d 687 (S.D. N.Y. 2007), the plaintiff sought an order staying arbitration of a matter after the arbitration began. The court refused to do so, holding that "granting an injunction would in effect disrupt the arbitration and alter the status quo." *Id.* at 688.

Similarly, in the present case the state court's March 31, 1997 order staying the license suspension – which suspension was in place as of March 27, 1997 – disrupted the state licensing board's disposition and altered the *status quo*.[1]

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[1] The district court's reasoning may have been proper if Lal had obtained a stay of the state licensing board's proceedings **before** the board issued its order of suspension. In that case, such a stay would have preserved the status quo because Lal's license would never have been suspended. But the undisputed facts are that the State of Michigan **did** suspend Lal's medical license, and the state

If Lal had never obtained an injunction staying the order of suspension, the Policy clearly would have terminated in March, 1997. If Lal had waited one month before obtaining an injunction the Policy again clearly would have terminated by its own terms because there is no provision saying that it "un-terminates" once a suspension is lifted or stayed. The same would hold true if Lal had waited one week or one day after being suspended before obtaining an injunction. Nor could it make any logical difference if Lal obtained an injunction the same day he received the order of suspension, for there was unquestionably a period of time during which his license to practice medicine was indisputably suspended by the State of Michigan and not subject to the state court's stay order. The Sixth Circuit correctly recognized that whether that period is one month, one week, one day or one hour is irrelevant, and Lal provides no principled, reasoned explanation why obtaining a stay soon after the suspension order was issued and served means that the Policy did not terminate by its unambiguous terms.

Lal is also wrong in asserting that the "status quo" with respect to the state court injunction should be viewed as the circumstances that existed before the March 27, 1997 suspension order because having a valid medical license was the last uncontested status preceding commencement of the controversy. (Petition at 6). The "status quo" is whatever set of circumstances exist at the time the action seeking

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court injunction altered the status of Lal's license and **changed** the *status quo*.

injunctive relief is commenced, not when the parties were last "at peace" with one another as Lal asserts. *Blaylock v. Checker Oil Co.*, 547 F.2d 962, 965 (6th Cir. 1976) (reversing injunction because "the district court went far beyond freezing the parties in their positions *at the time this action was commenced*").

At the time Lal commenced his state court action to stay the suspension order, the "status quo" was that the State of Michigan had suspended his medical license. The relief he sought (and which the state court granted), was an affirmative, mandatory injunction to **change** the *status quo* by enjoining the suspension order's enforcement.

In short, the "status quo" is the state of affairs that immediately precedes commencement of an action to obtain an injunction. If the injunction **preserves** the *status quo*, it is a "prohibitory" injunction; if it changes or alters the *status quo*, it is an "affirmative" or "mandatory" injunction. The state court altered the *status quo* by changing Lal's legal status from being a doctor with a suspended license to one who could practice medicine.

Third, by definition, a "stay" does not alter or void the matter that is stayed. Thus, the legal effect of the stay was not to "undo" the suspension order. In defining a stay, *Black's Law Dictionary* provides:

> A "stay" does not reverse, annul, undo or suspend what already has been done . . . but merely suspends the time for performance of the particular mandates stayed . . . .

See also, Herron v. Keene Corp., 751 F.2d 873, 875 (6th Cir. 1984) ("[t]he effect of a stay is simply to delay" what is stayed, but "[i]t does not affect the substantive rights and duties of the litigants"); *Reed v. Rhodes*, 472 F. Supp. 603, 605 (N.D. Ohio 1979) ("[a] stay does not reverse, annul, undo or suspend what has already been done . . . [n]or does a stay impair the force, or pass on the merits the orders [subject to a stay]").

Although the state court's stay order permitted Lal to continue to practice medicine, it did not void, reverse, or undo the fact that the State Medical Board suspended Lal's medical license in March, 1997, and the fact of that suspension is all that the Policy's unambiguous terms require for it to automatically terminate. It is the **fact** of suspension by the State Medical Board, not subsequent judicial remedies designed to stay the state agency's enforcement of that suspension, that is relevant with respect to the unambiguous terms of Policy.

Fourth, the Suspension Order was not immediately stayed when the circuit court entered the stay order. The stay order was an injunction prohibiting enforcement of the suspension order. Under Michigan state rules of procedure, although injunctions are not subject to the automatic 21 day stay like other judgments and "may be enforced immediately" under MCR 2.615(A)(2), nonetheless "notice of an injunction . . . is requisite to the enforcement of an injunction." *ARA Chuckwagon v. Lobert*, 69 Mich. App. 151, 163 (1976). See also MCR 3.310(C)(4) (injunction "binding only on the parties to the action . . . who receive actual notice of the order by personal service or otherwise"). The March 31, 1997 stay order was received by the

Medical Board on April 1, 1997. Thus, it was not enforceable until the day after it was issued, rather than having "immediate" effect.

CONCLUSION

Petitioner Lal cannot establish any compelling reason for granting his Petition, and it should therefore be denied.

Respectfully submitted,

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